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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
Amendment of Part 90 of the)
Commission's Rules to)
Facilitate Future Development)
of SMR Systems in the 800 MHz)
Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8029
RM-8030

To: The Commission

REPLY COMMENTS

OF

NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nextel Communications, Inc. ("Nextel"), formerly Fleet Call, Inc., strongly supports the Federal Communications Commission's (the "Commission") proposal to create a new "Expanded Mobile Service Provider" ("EMSP") license in the Specialized Mobile Radio ("SMR") service. Prompt implementation of EMSP licensing will promote the most efficient use of 800 MHz SMR spectrum, eliminate licensing delays, and facilitate development of the advanced wide-area SMR networks necessary to meet the public's need for ubiquitous, high quality mobile communications services.

Nextel compliments the Commission on its comprehensive and well-developed EMSP licensing plan. It recognizes that 800 MHz SMR spectrum is heavily licensed in many urban markets and that the Commission has already authorized wide-area SMR systems in a number of major metropolitan areas. It would enable 800 MHz SMR licensees to build out their existing infrastructure to establish wide-area systems that can be linked in regional and even nationwide SMR networks. In addition, the EMSP licensing plan contains provisions that will effectively prevent speculation and assure that EMSP licenses are awarded to bona fide applicants capable of implementing wide-area systems.

Thus, the Commission's EMSP licensing plan is optimally-designed to most efficiently and effectively authorize new advanced, wide-area SMR networks and promote competition. The Commission's EMSP licensing plan is sound and in the public interest and should be adopted within 90 days.

Nextel supports the Commission's proposal to grant EMSP licenses in each of the 47 Rand McNally Major Trading Areas ("MTAs"). An EMSP licensee should be able to reuse throughout the MTA all of its constructed and operational SMR frequencies, as well as any unconstructed frequencies authorized pursuant to current wide-area authorizations, provided it protects existing co-channel licensees. The Commission should permit EMSP applicants to exchange consideration as part of negotiating to resolve mutually exclusive applications. It should not impose any restrictions on transferability of EMSP authorizations held by existing licensees who are already operating these frequencies in traditional systems.

Finally, existing co-channel separation requirements should apply to EMSP authorizations on an interim basis while the Commission develops improved standards taking into account the propagation characteristics of digital SMR systems. Adjacent EMSP systems should be required to coordinate with each other to prevent co-channel interference.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Nextel Communications, Inc., ("Nextel" formerly Fleet Call, Inc.), pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (the "Commission"), hereby respectfully submits its Reply Comments in support of the Notice of Proposed Rulemaking (the "Notice") in the above-captioned proceeding.^{1/}

The Notice proposes establishing a new type of Specialized Mobile Radio ("SMR") authorization, the "Expanded Mobile Service Provider" ("EMSP") license. As proposed, an EMSP licensee could reuse its assigned 800 MHz SMR Category frequencies throughout a defined geographic area, so long as it provides interference protection to existing co-channel stations. By enabling a licensee to aggregate and reuse channels throughout large commercially-linked regions, EMSP licensing would facilitate creation of the

^{1/} 8 FCC Rcd 3950 (1993).

seamless, advanced SMR networks necessary to meet the public's increasing desire for ubiquitous, high quality mobile communications.

Nextel, the pioneer in developing digital, wide-area SMR systems,^{2/} filed comments supporting the EMSP licensing proposal.^{3/} Nextel endorses the Commission's conclusion that it should adopt rules facilitating wide-area licensing in both congested and rural areas. This is essential to reduce the excessive administrative overhead now imposed on the Commission's limited licensing resources as a result of authorizing wide-area 800 MHz SMR systems on a case-by-case, station-by-station waiver basis. The expeditious implementation of EMSP licensing, with a few refinements as discussed below, will promote the most efficient use of 800 MHz SMR spectrum, eliminate processing delays, and better achieve the Commission's land mobile radio licensing objectives.

II. DISCUSSION

Review of the comments filed in this proceeding indicate that the majority support the Commission's EMSP licensing concept. Most commenters agree that EMSP licensing will facilitate efficient use of 800 MHz SMR spectrum and enable deployment of advanced, wide-

^{2/} See In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991) (the "Fleet Call Waiver Order"), recon. den. 6 FCC Rcd 6989 (1991).

^{3/} Comments of Fleet Call, Inc., filed July 19, 1993. On July 22, 1993, Fleet Call officially changed its corporate name to Nextel Communications, Inc.

area systems capable of competing with other mobile communications services. The comments address certain details of the EMSP licensing proposal including, inter alia, EMSP licensing areas, initial eligibility requirements for EMSP licenses, means to prevent speculation and warehousing, co-channel interference standards, and procedures for selecting among mutually exclusive EMSP applicants. Nextel comments on these issues, as set forth below.

A. Wireline Eligibility and Regulatory Parity

In addition to the private land mobile radio industry, comments were also filed in this proceeding by wireline telephone companies and cellular radio providers. While generally supporting the Commission's EMSP licensing objectives, they assert (1) that wireline telephone companies should be eligible for EMSP licenses (and SMR licenses generally);^{4/} and (2) that EMSP licensing requires additional revisions of the Commission's SMR rules, regulations and policies to create regulatory parity among providers of "like" mobile services.

Nextel supports elimination of the exclusion of wireline telephone companies from eligibility to be SMR licensees; however, this matter is outside the scope of this proceeding. The instant proceeding concerns streamlining the authorization of wide-area SMR systems for SMR eligibles. Whether wireline telephone companies and their affiliates should be permitted to be SMR licensees is the

^{4/} Section 90.603(c) of the Commission's Rules excludes wireline telephone common carriers from being eligible to be SMR licensees.

subject of proceedings in PR Docket No. 86-3.5/ Comments seeking elimination of the SMR wireline prohibition are misplaced and are merely intended to thwart the growth of advanced, wide-area SMR systems.

A few of the common carriers commenters assert that EMSP licensing would provide wide-area EMSP licensees with competitive advantages over cellular carriers in terms of exemption from common carrier regulatory obligations. They contend, therefore, that in conjunction with adopting EMSP licensing, the Commission should amend its rules to assure "regulatory parity" among all for-profit providers of mobile communications services. For example, GTE comments that any operator of a wide-area, interconnected SMR system, including EMSP licensees, should be treated as a "commercial mobile services provider" through either legislation amending the Communications Act or Commission rulemaking.6/

As the commenters well know, Congress is considering legislation amending Section 332 of the Communications Act to create a new category of "commercial mobile service."7/ The regulatory parity provisions of the proposed legislation fully

5/ See Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in 800 MHz Land Mobile Band, PR Docket No. 86-3, 51 Fed. Reg. 2910 (Jan. 22, 1986). The Commission recently terminated this proceeding. Order Terminating Proceeding, 7 FCC Rcd 4398 (1992). Petitions for Reconsideration are pending. See also Southwestern Bell's Request for Permanent Waiver, PR Docket No. 86-3, filed September 18, 1992.

6/ Comments of GTE Corporation at p. 6.

7/ See Conference Agreement on the Omnibus Budget Reconciliation Act of 1993, as filed August 4, 1993.

address any legitimate competitive and regulatory concerns expressed by commenters in this proceeding. Accordingly, no further consideration of these issues is necessary or warranted herein.^{8/}

The Commission should move expeditiously to adopt EMSP licensing, as discussed below. For more than two years, the Commission has permitted SMR licensees to reconfigure their fully loaded and constructed stations into wide-area, advanced communications systems employing frequency reuse and digital technology to provide enhanced services to customers.^{9/} The EMSP licensing proposal is a significantly more efficient and expeditious means for authorizing 800 MHz SMR licensees to implement advanced technologies and design services and coverage responsive to evolving customer demand. It is not, as Radiofone and other cellular carrier commenters suggest, a new restructuring of the SMR service.^{10/} The Commission has long since determined that SMR licensees can construct and operate systems offering services that may compete with those offered by Part 22 cellular

^{8/} As the comments make clear, "regulatory parity" has become the common carrier buzzwords for "we do not want competition." See e.g., Comments of Radiofone, Inc., filed July 19, 1993 at pp. 9-11.

^{9/} See e.g., the Fleet Call Waiver Order; Letter dated April 13, 1992 from Richard J. Shiben, Chief, Land Mobile and Microwave Division, Private Radio Bureau, to George Hertz, President, Advanced MobileComm of New England, Inc.

^{10/} The essence of Radiofone's comments is that despite 10 years of spectacular growth and success, cellular is a nascent industry requiring protection from competition to survive in the marketplace. Its suggestions for EMSP licensing are solely intended to weaken the ability of EMSP (and other SMR) licensees to provide high-quality, competitive mobile communications services.

radio licensees.^{11/}

B. EMSP Licensing Area

The Notice proposes granting EMSP licenses for Commission-defined areas, in contrast to the licensee-defined service areas currently used in authorizing wide-area SMR systems. It tentatively concluded that EMSP licenses should be granted for either the 47 Rand-McNally Major Trading Areas ("MTAs") or alternatively, each of the 487 Basic Trading Areas ("BTAs"). The Notice sought comment on these and other Commission-defined licensing areas.

Nextel supports MTA boundaries for EMSP licenses. MTA-wide EMSP licensing was favored by most commenters and would minimize administrative overhead and promote creation of efficient wide-area 800 MHz SMR systems. The public interest is best served by EMSP licensing that directly builds on the success of existing 800 MHz SMR licensees -- many of whom already have obtained wide-area authorizations or have multiple station wide-area service capabilities.^{12/} It would permit them to build out around the areas in which they already operate to better serve existing customers. Each MTA includes at least one significant metropolitan area, plus surrounding commercially-related areas. MTAs are large enough to enable entrepreneurs to meet their customers' needs for

^{11/} Fleet Call Waiver Order at paras. 28-30; Amendment of Part 90 (Docket No. 20846), 93 FCC 2d 1111 (1983), aff'd without opinion sub. nom. Telocator v. FCC, No. 83-1905, D. C. Cir., May 1, 1985.

^{12/} Some existing wide-area licenses cover areas larger than other geographic EMSP boundaries proposed in the Notice, such as BTAs or MSAs.

regional service coverage and offer the economies of scale and population densities needed to support the investment required to initiate advanced technology systems. The public's interest in the prompt availability of advanced services will be better served by the reduced administrative burden of licensing EMSP systems for 47 MTAs rather than nearly 500 BTAs.

An optimum and practical EMSP licensing scheme must be consonant with the mature, heavily licensed 800 MHz SMR industry. The Notice recognizes that most of the 800 MHz SMR spectrum is fully licensed in many major metropolitan areas and that wide-area 800 MHz SMR systems have already been authorized in some of the largest metropolitan areas. In this reality, MSA/RSA licensing would bear little relation to existing systems and would result in fewer economically viable systems.^{13/} Those commenters supporting MSA/RSA-based EMSP licensing seek to disadvantage wide-area SMR systems and limit effective competition with their own wide-area mobile communications services.^{14/}

A few commenters continue to favor licensee-defined boundaries, e.g., the overlapping contours of existing constructed service areas. This invites a tangled web of daisy-chained mutually exclusive applications that would substantially slow the

^{13/} In proposing MTA/BTA-based EMSP licensing, the Commission is recognizing that a mature industry requires a different licensing approach than may be optimal for initial licensing of a new service.

^{14/} Every one of the commenters supporting MSA/RSA licensing for EMSP systems is a common carrier attempting to prevent effective competition.

licensing process, increase administrative requirements, and benefit only the legal and engineering communities.^{15/} It would seriously impede the development of competitive wide-area SMR commercial services.

Moreover, permitting licensee-defined wide-area SMR systems has been barely manageable for the ad hoc development of wide-area systems; it would be unworkable with the larger number of applications likely to be filed in an EMSP filing window. As Dial Page, Inc. states,

"If each service area is self-defined, the Commission will likely be faced with the task of identifying and resolving a myriad of daisy chaining interference problems. In light of the resources and time required to resolve each of these problems, Dial Page supports the FCC's proposal to establish EMSP market boundaries in advance. The Commission will then be able to sort out mutually exclusive applications. . . ." ^{16/}

Accordingly, Nextel strongly supports adoption of MTA boundaries for EMSP licensing purposes. A primary objective of this proceeding is to facilitate the development of wide-area SMR systems throughout the country.^{17/} MTA-based EMSP licensees would join with existing constructed advanced SMR systems to create

^{15/} The National Association of Business and Educational Radio ("NABER") favors retaining applicant-defined wide-area systems based on the applicant's constructed stations meeting an aggregate loading standard -- essentially the status quo. This is essentially a reiteration of NABER's comments on AMTA's Blueprint rulemaking proposal. See RM-8117, Comments of NABER, filed December 21, 1992 at pp. 7-9. The Commission has already rejected this approach in proposing the EMSP licensing initiative and NABER has offered no additional legal or policy support for its position.

^{16/} Comments of Dial Page, Inc. at pp. 5-6.

^{17/} Notice at paras. 7-9.

a nationwide service capability. MTA-wide EMSP licensees will be better positioned to compete with regional cellular operators, PCS providers, 900 MHz wide-area systems and other wide-area mobile communications systems.

C. Initial EMSP Licensing Eligibility

Upon review of the comments, Nextel continues to support the Commission's proposal to limit initial EMSP licensing eligibility to 800 MHz SMR licensees within each EMSP licensing area.^{18/} As AMTA states,

" . . . the public will be served most expeditiously by permitting operational licensees to convert existing systems to wide-area configurations. . . They have the market and customer expertise, as well as the economic foundation and incentive, to bring service to the public promptly."^{19/}

This is the only sensible approach given the fact that SMR systems already occupy most or all of the 800 MHz SMR channels in major metropolitan markets. A new EMSP entrant would be required to protect existing systems, making it impossible to provide true wide-area coverage, particularly in the urban most frequency congested portion of the MTA.

Moreover, the few commenters who advocate that EMSP licensing be initially open to all understand well that this would effectively undercut the economic viability of wide-area EMSP networks and thereby obstruct competition. This argument is

^{18/} Existing licensees would be permitted an initial application window to apply to reuse their constructed and operational channels throughout the MTA. Notice at para. 15.

^{19/} Comments of AMTA at p. 10-11.

advanced by the wireline telephone companies in support of eliminating the wireline eligibility restriction and permitting initial EMSP applications to be filed by any SMR or those with pending applications to acquire SMR facilities. In this way, wireline telephone companies would have the best of both worlds: the right to become SMR licensees and a more fragmented EMSP licensing process to hinder development of effective wide-area EMSP competitors to cellular services.20/

Nextel emphasizes that existing licensees should be permitted to include frequencies authorized by wide-area grant in their EMSP applications even if unconstructed. Under current policies, the recipient of wide-area SMR authority has "earned the right to exclusive use" of its channels within its licensed area.21/ At the same time, given the complexity of advanced, wide-area systems, most licensees have been granted up to five years to construct such facilities. Permitting channels authorized pursuant to wide-area licenses to be included in EMSP applications would allow more efficient frequency reuse and advance the Commission's desire to facilitate the SMR industry's transition to wide-area SMR networks.

20/ See Comments of Southwestern Bell Corporation, filed July 19, 1993 at pp. 18-19; Comments of BellSouth Corporation, filed July 19, 1993 at p. 4. The wireline telephone companies' complaint against initially restricting EMSP eligibility to existing SMR licensees is most disingenuous given that one of the two cellular licenses in each of the more than 700 MSAs and RSAs was reserved for a wireline telephone company. As the beneficiaries of the cellular wireline set-aside, they should be appreciative of the public interest considerations supporting limiting initial EMSP eligibility to incumbents with constructed and operational stations in each market.

21/ Fleet Call Waiver Order at para. 22.

D. Use of Advanced Technology

Nextel supports requiring EMSP licensees to utilize technology that is six times more efficient than today's analog SMR transmission technology. Other commenters also recognize the value of requiring EMSP licensees to implement advanced technologies as a reasonable trade-off for the exclusive right to use their frequencies throughout a large area.^{22/} The availability of seamless state-of-the-art nationwide SMR services will inevitably be delayed without this requirement. Nextel reiterates that the Commission's vision of facilitating competitive offerings of advanced mobile communications services will be seriously compromised by failing to require EMSP licensees to implement advanced technology SMR systems.^{23/}

E. Licensing Process Considerations

In its comments, Nextel supported a number of modifications to the proposed EMSP licensing process designed to facilitate resolution of mutually exclusive applications, minimize opportunities for speculation, and best assure that the most qualified and committed applicants obtain EMSP authorizations.

First, Nextel proposed that mutually exclusive applicants be free to exchange cash, an interest in the surviving party's application or such other "consideration" as they agree is

^{22/} See e.g., Comments of NABER at p. 11; Comments of Pactel Paging at p. 16.

^{23/} Comments of Fleet Call, Inc. at p. 14.

appropriate to resolve mutually exclusive EMSP applications.^{24/} AMTA also recommended that consideration be permitted, commenting that negotiations are not typically successful unless the parties can obtain "compensation" for what they surrender.^{25/} Nextel continues to believe that consideration must be permitted if the proposed 60-day negotiating window for settling mutually exclusive EMSP applications is to have any efficacy. So long as the process is limited to bona fide applicants, another benefit of limiting initial eligibility to existing SMR licensees, opportunities for abuse will be negligible.

Second, Nextel recommended that the Commission require delivery -- at the conclusion of the negotiating period -- of the proposed escrow or performance bond necessary to obtain an extended EMSP implementation period. This is intended to create additional incentives for mutually exclusive parties to settle, and to further deter speculation by requiring lottery entrants to demonstrate their financial qualifications.^{26/} AMTA and Dial Page also support this approach and it should be adopted.^{27/}

Finally, Nextel recommended that each EMSP applicant be

^{24/} The Notice proposed that no consideration be permitted among negotiating mutually exclusive applicants in exchange for agreement to withdraw or amend such applications. Notice at para. 27.

^{25/} Comments of AMTA at p. 18.

^{26/} A licensee with sufficient existing stations constructed to satisfy the proposed construction requirements; i.e., one converting from analog to digital operations, should be exempted from the escrow or performance bond.

^{27/} Comments of AMTA at p. 20; Comments of Dial Page at p. 11.

required to file with its application a proposed system design plan demonstrating how it will comply with the EMSP construction requirement; i.e., construct facilities covering 80 percent of the population or area of the MTA within five years. This would provide a basis for evaluating the applicant's cost estimates and ability to meet the 80 percent construction standard. This also received support from other SMR industry commenters and should be adopted as well.28/

F. Restrictions on EMSP License Transferability

The Notice proposes prohibiting assignments of EMSP licenses for at least three years and prohibiting any assignments of licenses for unconstructed EMSP systems.29/ Although Nextel generally supports anti-trafficking rules, it recommended that such restrictions not apply to existing licensees of constructed and operational SMR systems that obtain EMSP grants.30/ In such circumstances, an EMSP license will be essentially an enhancement of the licensee's underlying traditional stations. There are no public interest objectives served by preventing EMSP grantees that have constructed and operational traditional SMR systems from exercising their business judgments in the fast-moving, dynamic mobile communications marketplace.

A number of commenters expressed concern that the proposed transferability restrictions are an unnecessary and unwarranted

28/ Comments of AMTA at p. 24; Comments of Dial Page at p. 9.

29/ Notice at para. 42.

30/ Comments of Fleet Call, Inc. at p. 18-19.

restriction on existing licensees obtaining an EMSP license to convert traditional systems to advanced wide-area operations.^{31/} Dial Page comments that such restrictions could have a chilling effect on financing and other legitimate transactions having no indicia of trafficking intent.^{32/} For the reasons discussed above and in its Comments, Nextel recommends that there be no restrictions on the transferability of EMSP authorizations held by existing licensees.

G. Co-Channel Interference Standards

A number of comments recognize the importance of effective co-channel separation requirements to the development of high-quality EMSP networks as well as for existing stand-alone SMR systems. In its Comments, Nextel stressed the increasing complexity of this issue given the introduction of digital SMR systems into the current analog SMR RF environment.^{33/} It recommended that while moving expeditiously to adopt EMSP licensing, the Commission retain its existing SMR co-channel separation requirements in Section 90.621(b) of the Rules pending development of more reliable empirical data and propagation models. Nextel also stated that the

^{31/} See e.g., Comments of AMTA at pp. 26-27. AMTA states that existing licensees have already placed their authorized frequencies in operation and is serving customers; therefore, assignment or transfer of these stations and the associated EMSP license at any time would not constitute trafficking and should be permissible. See also Comments of Pactel Paging at n. 51, urging the Commission not to impose post-grant transfer restrictions on successful EMSP applicants.

^{32/} Comments of Dial Page at p. 13.

^{33/} Comments of Fleet Call at pp. 19-22.

proposed 22 dBu signal strength limitation at the MTA border would prevent reliable service at areas within the MTA near the border and recommended an alternative EMSP border co-channel interference protocol modeled after the rules for adjacent cellular systems.^{34/}

Nextel wishes to reemphasize the importance of the Commission adopting effective co-channel interference standards for EMSP operations based on actual operating results, not simply the untested theoretical performance of advanced digital SMR systems.^{35/} It reiterates its recommendation for a cooperative coordination process among adjacent EMSP systems modeled after the rules applicable to cellular radio operations. The Commission should defer further refinement of its co-channel separation standards pending development of reliable empirical data and improved propagation models on which to base superior interference protection parameters.

III. CONCLUSION

Nextel supports the Commission's EMSP licensing proposal. It offers a sound approach to expediting the creation of advanced, wide-area systems offering competitive enhanced mobile

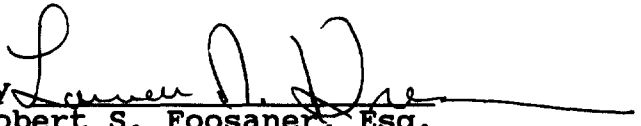
^{34/} Section 22.902(d) of the Commission's Rules. NABER supports a cooperative self-coordination approach for adjacent EMSP systems modeled after Section 22.902(d).

^{35/} Commenters in the ongoing proceeding concerning co-channel separation standards in PR Docket No. 93-60 have recognized that more sophisticated propagation analysis is necessary to understand and account for the interference ramifications of new digital modulation schemes and the possible impact of multiple interferers in a mixed environment of high and low power SMR systems.

communications services to the American public. EMSP licensees will have strong incentives to come together to create regional and nationwide advanced digital SMR networks. Accordingly, the Commission should expeditiously adopt EMSP licensing with the refinements discussed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICES

I hereby certify that a copy of the foregoing Reply Comments of Fleet Call, Inc. has been mailed by United States first class mail, postage prepaid, this 5th day of August 1993, to the following:

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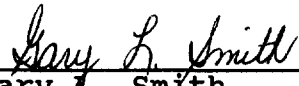
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